

Marie Carter, Chief Counsel, Stat Bar No. 70403
Wendy Breckon, Staff Counsel, State Bar No. 182952
California Environmental Protection Agency
California Integrated Waste Management Board
1001 I Street, P.O. Box 425, Sacramento CA., 95812
Phone: (916) 341-6068
Fax: (916) 341-6082

BEFORE THE CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
STATE OF CALIFORNIA

In the Matter of:

DOROTHY J. AND BENJAMIN H. SMITH,
JR. PROPERTY OWNERS; AND

MICHAEL SMITH, JR., OPERATOR AND
WASTE TIRE HAULER

RE:/d.b.a., Central Valley Tire Disposal

OAH No. N-2003090290

STIPULATION FOR ISSUANCE OF
ADMINISTRATIVE DECISION

AGENCY NO. 2003-010477

TIRE SITE FACILITY NO. 10-TI-1316

WASTE TIRE HAULER REGISTRATION
NO. 1005598-01

The parties to this STIPULATION are the CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD (the "CIWMB"), and DOROTHY J. AND BENJAMIN H. SMITH, JR., Property Owners and MICHAEL SMITH, Operator and Waste Tire Hauler ("Respondents") of that certain property located at 1661 North Grantland Avenue, Fresno, CA 93722, Assessor's Parcel Number (APN) 312-290-21 (the "Subject Property"), on the other hand.

The CIWMB and Respondents have entered into a settlement of the complaint herein, pursuant to which they hereby stipulate as follows:

1. Respondents stipulate to an administrative penalty in favor of the CIWMB in the sum of Five Thousand Dollars (\$5,000.00), for the violations set forth in the

S:\LEGAL\JIM\WENDY BRECKON STUFF\CENTRAL VALLEY TIRE DISPOSAL - SMITH\Stip. for Admin.

Administrative Complaint. Respondents further authorize an Administrative Law Judge to sign and issue the proposed Decision forthwith.

2. Respondents shall pay to the CIWMB the sum of Five Thousand Dollars (\$5000.00), as follows: Respondents shall make monthly payments in the sum of ONE HUNDRED THIRTY-EIGHT DOLLARS AND EIGHTY-NINE CENTS (\$138.89) on the first day of each month for a period of thirty-six (36) months, commencing on July 1, 2004, through and including June 1, 2007.

(a) All payments shall be made to the CIWMB, Attn: Kim Beard, at P.O. Box 4025, Sacramento, CA 95812, or to such other person and/or place as the CIWMB or its agent may from time to time designate in writing. If any payment by Respondents hereunder is not received within five days of the due date, then Respondents shall be deemed in default of this STIPULATION and the CIWMB or its agent may enforce the Decision.

3. Said amount shall constitute the full amount of the penalty in this action unless Respondents default under the terms of this STIPULATION in which case the penalty shall consist of the FOURTEEN THOUSAND DOLLARS (\$14,000.00). Payment of said penalty shall be due on the date of default minus any amounts previously paid. Interest shall accrue at the modified adjusted rate per annum pursuant to Revenue and Taxation Code Section 6591.5, from the date of default. Respondents authorize an Administrative Law Judge to sign a revised Decision stating the revised penalty due on the date of default in the Decision.

4. **Waste Tire Removal Schedule:** Respondents shall complete the removal of all waste tires (whole and/or tire equivalents) from the Subject Property by no later than July 26, 2004. All tires removed from the premises must be legally transported by a Registered Waste Tire Hauler to a CIWMB approved facility. Copies of destination receipts and waste tire manifest forms must accompany each load and be submitted by August 1, 2004 to the CIWMB, Attn: Wendy A. Breckon, Staff Counsel, P.O. Box 4025, MS 5, Sacramento, CA 95812.

S:\LEGAL\JIM\WENDY BRECKON STUFF\CENTRAL VALLEY TIRE DISPOSAL - SMITH\Stip. for Admin.

- 1 **5. Property Access Authorization:** If Respondents fail to properly remove all of
2 the tires by July 26, 2004, as provided in paragraph 4, above, and if the CIWMB
3 elects to perform the remainder of such cleanup, then Respondents authorize
4 CIWMB staff, their designated contractors and representatives, and other affected
5 State and local authorities access to the Subject Property for the purpose of
6 removing the waste tires. Any such cleanup shall be performed under the Waste
7 Tire Stabilization and Abatement Program pursuant to the Public Resources Code
8 (PRC) sections 42800-42855, Waste Tires. Respondents, DOROTHY J. AND
9 BENJAMIN H. SMITH, JR., hereby certify that they are the legal owners of the
10 Subject Property and have authority to grant such access.
- 11 **6. Future Storage of Tires:** Respondents stipulate that after cleanup of the site has
12 been accomplished and approved by CIWMB, no more than FIVE HUNDRED
13 (500) used or waste tires may be allowed on the subject property at any time
14 without first obtaining a waste tire facility permit. Any tires removed from the
15 subject property must be legally transported by a Registered Waste Tire Hauler to
16 a CIWMB approved facility. Copies of destination receipts and CIWMB waste
17 tire manifest forms must accompany each load and must be maintained for three
18 years.
- 19 **7. Inspections:** Upon presentation of proper credentials, CIWMB staff, an
20 authorized agent of the CIWMB, or Fresno County, shall be allowed to enter the
21 Subject Property during regular business hours to conduct inspections and
22 investigations of the premises, to examine and copy tire manifests, and to take
23 photographs of any and all tires on the premises.
- 24 **8. Default:** If Respondents default under the terms of this STIPULATION, then the
25 CIWMB shall send Respondents a letter, via certified mail, notifying them of the
26 same. Said letter shall apprise Respondents of the provision(s) of the
27 STIPULATION of which they are in default, and will attach a copy of the
28 Inspection Report or other report documenting the violation(s) in issue. For any
S:\LEGAL\JIM\WENDY BRECKON STUFF\CENTRAL VALLEY TIRE DISPOSAL - SMITH\Stip. for Admin.

CIWMB determination of a violation of the promise to cleanup the waste tire site at 1661 North Grantland Avenue, Fresno, CA, 93722, by July 26, 2004, or for any other violation of any waste tire storage or disposal laws at Chapter 16 of the Public Resources Code (section 42800 et. seq.), said letter will further relate that the Office of Administrative Hearings will immediately issue a Decision for FOURTEEN THOUSAND DOLLARS (\$14,000.00) minus any payments previously made. For any CIWMB determination that Respondents have violated any term or condition of this agreement, other than said waste tire storage or disposal laws, said letter will state Respondents will be granted a ten (10)-day period of time for any default of the agreement to be cured. If the default is not cured within ten (10) days, a second letter will be issued, which will state that the Office of Administrative Hearings will immediately issue a Decision for FOURTEEN THOUSAND DOLLARS (\$14,000.00) minus any payments previously made. The Administrative Decision may be converted into a Civil Judgment, which CIWMB may enforce as it deems appropriate. Respondents acknowledge that they understand and agree that they will not be provided with any hearing or other opportunity to contest the Office of Administrative Hearing's determination that they are in default of this STIPULATION. Respondents also acknowledge that a default of this STIPULATION shall result in permanent revocation of MICHAEL SMITH's Waste Tire Hauler Registration.

9. Waste Tire Hauler Registration: The waste tire hauler's registration no. 1005598-01 and decal nos. 04-05686, 04-05687, 04-05688, and 04-05689, heretofore issued to MICHAEL SMITH JR., dba CENTRAL VALLEY TIRE DISPOSAL, are hereby suspended pursuant to Public Resources Code section 42960 for a period of seven (7) days commencing April 21, 2004 and ending April 27, 2004. During said period of suspension, SMITH shall not haul used or waste tires or otherwise exercise any of the privileges granted under the waste tire hauler registration and decals. In addition, the waste tire hauler's registration is placed

S:\LEGAL\JIM\WENDY BRECKON STUFF\CENTRAL VALLEY TIRE DISPOSAL - SMITH\Stip. for Admin.

1 on probation for a period of three (3) year(s) from the effective date of this
2 Agreement under the following terms and conditions:

3 (1) SMITH shall obey any waste tire storage or disposal laws at Chapter
4 16 of the Public Resources Code (section 42800 et. seq.), and waste tire
5 hauler laws at Chapter 19 (section 42950 et. seq.) and the rules and
6 regulations of the CIWMB now or hereafter in effect

7 (2) Any registration issued to SMITH during a period of three (3) years
8 shall be issued as a probationary registration and then only if it is
9 determined that SMITH has fully complied with the terms and conditions
10 hereof and that no cause for denial to issue, suspend or revoke has
11 intervened or exists.

12 (3) Should the CIWMB at any time during the existence of said
13 probationary registration or the renewal thereof, determine upon
14 satisfactory evidence that SMITH has violated a) any of the terms and
15 conditions under which said registration was issued, or b) that either
16 MICHAEL SMITH JR., or DOROTHY J. SMITH JR., property owner,
17 OR BENJAMIN H. SMITH, JR., property owner, have defaulted on the
18 terms and conditions of this Stipulation, the CIWMB may permanently
19 revoke SMITH's waste tire hauler registration. A 10-day Notice to Cure
20 will be issued to SMITH for any violation of a term or condition of the
21 agreement other than a violation of any waste tire storage or disposal laws
22 at Chapter 16 of the Public Resources Code (section 42800 et. seq.). No
23 10-day Notice to Cure will be provided for any violation of any waste tire
24 storage or disposal laws as described above. SMITH acknowledges that he
25 understands and agrees that he will not be provided with any hearing or
26 other opportunity to contest the CIWMB's determination that either the
27 terms and conditions of said registration was violated or that the above-
28 mentioned signatories to the Settlement Agreement in OAH Case No.

S:\LEGAL\JIM\WENDY BRECKON STUFF\CENTRAL VALLEY TIRE DISPOSAL - SMITH\Stip. for Admin.

2003090290 are in default, nor will a hearing or other opportunity to contest the permanent revocation of the waste tire hauler registration be provided in the event of said default.

(4) SMITH shall permit free and ready access to business records pertaining to the hauling of used and waste tires at the request of a CIWMB, City, or County inspector or investigator during normal business hours and without prior notice.

10. No covenant, promise, term, condition, breach or default of or under this STIPULATION shall be deemed to have been waived except as expressly so stated in writing by the CIWMB. A waiver by the CIWMB of any breach or default by Respondents under this STIPULATION shall not be deemed a waiver of any preceding or subsequent breach or default by Respondents.
11. Respondents have freely and voluntarily entered into this STIPULATION and have been afforded the opportunity to consult with counsel prior to entering into this STIPULATION. It is expressly understood and agreed that no representations or promises of any kind, other than as contained herein, have been made by any party to induce any other party to enter into this STIPULATION, and that said STIPULATION may not be altered, amended, modified or otherwise changed except by a writing executed by each of the parties hereto. Each party hereto agrees to execute and deliver any and all documents and to take any and all actions necessary or appropriate to consummate this STIPULATION and to carry out its terms and provisions.
12. SMITH waives the right, in the entitled matter to a hearing, any and all appeals and any and all rights that may be afforded pursuant to the Public Resources Code, the Administrative Procedure Act, or any other provision of law.
13. This STIPULATION shall be binding and inure to the benefit of their successors, heirs and assigns of the respective parties hereto.

S:\LEGAL\JIM\WENDY BRECKON STUFF\CENTRAL VALLEY TIRE DISPOSAL - SMITH\Stip. for Admin.

Decision 7-8-2004.doc

- 1 14. This STIPULATION and the Decision constitute the entire understanding of the
2 parties concerning the settlement of this proceeding. There are no restrictions,
3 promises, warranties, covenants, undertakings, or representations other than those
4 expressly set forth herein or contained in separate written documents delivered or
5 to be delivered pursuant hereto, and each party expressly acknowledges that he
6 has not relied upon any restrictions, promises, warranties, covenants,
7 undertakings, or representations other than those expressly contained herein.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

S:\LEGAL\JIM\WENDY BRECKON STUFF\CENTRAL VALLEY TIRE DISPOSAL - SMITH\Stip. for Admin.

Decision 7-8-2004.doc

Dated:

7/23/04

Wendy Breckon
WENDY BRECKON
Staff Counsel
CALIFORNIA
INTEGRATED WASTE
MANAGEMENT BOARD

Dated:

7-21-04

Benjamin H. Smith, Jr.
BENJAMIN H. SMITH, JR.
Property Owner

Dated:

7-21-04

Dorothy J. Smith
DOROTHY J. SMITH
Property Owner

Dated:

7-21-04

Michael H. Smith, Jr.
MICHAEL SMITH, JR.
Operator

S:\LEGAL\JIM\WENDY BRECKON STUFF\CENTRAL VALLEY TIRE DISPOSAL - SMITH\Stip. for Admin.

Decision 7-8-2004.doc